

REMARKS

This Application has been carefully reviewed in light of the Office Action electronically mailed on September 25, 2007 (the “Office Action”). Claims 1-36 are pending in the application and stand rejected. Applicant amends Claims 1 and 24 and respectfully requests reconsideration and favorable action in view of the following remarks.

Premature Finality of the Office Action--Summary of Telephonic Interview

Applicant’s attorney, Mr. John J. “Jake” May, conducted a telephonic interview with Examiner Castellano on November 21, 2007. Pursuant to M.P.E.P. § 713.04, Applicant submits this summary of the telephonic interview to record Applicant’s understanding of the substance of the interview. If Applicant’s understanding is inaccurate, notice of such is appreciated. Attorneys for Applicant thank Examiner Castellano for the courtesy of his telephonic interview. During the interview, the premature finality of the Office Action was discussed, and Examiner Castellano agreed to withdraw the finality of the Office Action mailed September 25, 2007. Applicant understands that the Examiner will issue an interview summary and change the status of the Office Action mailed on September 25, 2007 to Non Final.

Claim Rejections - 35 USC §102

The Office Action states that Claim 1 is rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2004/0247389 to Fuchs (“*Fuchs*”). Applicant respectfully traverses this rejection.

Amended Claim 1 is directed to an underground tank shroud assembly including a shroud. The shroud includes a top region and a base region and is configured to circumferentially enclose a riser of an underground tank. The assembly also includes a shroud lid. The shroud lid is configured to cover the top region of the shroud and is coupled to the shroud at both a first hinge coupling and a second hinge coupling, when the shroud lid is in a closed position.

In response to Applicant’s argument that *Fuchs* does not disclose, teach, or suggest a shroud lid coupled at a first hinge coupling and second hinge coupling, Examiner states that “[a]lthough the interlock of the first and second element can’t be produced simultaneously, the fact remains that each interlock and the lid can be operated by rotating the first end upward then

lowering followed by rotating the second end upwardly.” (Office Action p. 5). As indicated by the Examiner, the pivot elements of *Fuchs* can not be engaged simultaneously, and the engagement can only occur when one end is rotated upward. (*see Fuchs*, Claim 4; par. 16; Fig. 3). The pivot elements only interlock when an end is rotated upward, and when *Fuchs* is in a closed position, neither pivot element is interlocked to provide an hinge coupling. (*see Fuchs*, par. 25, lines 1-6; Fig. 1). Accordingly, *Fuchs* does not disclose, teach, or suggest a shroud lid coupled to the shroud at both a first hinge coupling and a second hinge coupling, when the shroud lid is in a closed position.

Moreover, *Fuchs* also does not disclose, teach, or suggest a shroud comprising a top region and a base region that is configured to circumferentially enclose a riser of an underground tank. Rather, *Fuchs* discloses a “cover arrangement [that] is so constructed that it can be set in a form-fitting manner onto a channel arrangement, drainage channel, cable channel, shaft or similar structure (not shown in the drawing) that can be installed in the ground and opened.” (*Fuchs*, paragraph 37). The element of *Fuchs* that the Office Action contends is the shroud is frame 10. (Office Action p. 2). Frame 10 is not a shroud and it does not have a base region. Accordingly, *Fuchs* does not disclose, teach, or suggest a shroud lid comprising a top region and a base region that is configured to circumferentially enclose a riser of an underground tank.

For at least these reasons, Applicant contends that Claim 1 is patentably distinguishable from *Fuchs*, and therefore respectfully requests that the rejection of Claim 1 be withdrawn.

Claim Rejections - 35 USC §103

The Office Action states that Claims 1-34 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over German Reference No. DE 20004612 to Kewitz (“*Kewitz*”) in view of *Fuchs* and U.S. Patent No. 6,296,135 to Anderson (“*Anderson*”). Applicant respectfully traverses these rejections.

The Office Action contends that “Kewitz discloses the invention except for the shroud lid having two hinge couplings.” (Office Action, p. 3). It further contends that, “Fuchs teaches a cover arrangement capable of performing as a shroud with a lid having two hinge couplings.” *Id.* As stated above, *Fuchs* does not disclose, teach, or suggest a shroud lid coupled to the shroud at both a first hinge coupling and a second hinge coupling, when the shroud lid is in a closed

position. Accordingly, the combination of *Kewitz* and *Fuchs* does not disclose, teach, or suggest the combination of elements of Claim 1.

Moreover, modifying *Kewitz* to include the “rotation and fixation devices” of *Fuchs*, (*Fuchs*, paragraph 13, lines 3-4), would change the principle of operation of *Kewitz* and cause *Kewitz* to be unsatisfactory for its intended purpose. The “rotation and fixation devices” of *Fuchs* allow “the cover [to be] lifted up [in a direction perpendicular to the frame, without being tilted with respect to the frame], [and] the hook-shaped pivot elements of all hinge means simultaneously become disengaged from the pivot pegs.” (*Fuchs*, paragraph 15, lines 10-13). Figure 1 of *Kewitz* appears to show element 13 that secures element 12 to element 11 when element 12 is in a closed position. If *Kewitz* was modified to include the pivot elements of *Fuchs*, element 12 would not be secured to element 11 when element 12 is in a closed position. Accordingly, the combination of *Kewitz* and *Fuchs* is improper and cannot support an obviousness rejection because *Fuchs* would change the principle of operation of *Kewitz*. M.P.E.P. § 2142.01.

The Office Also contends that “[i]t would have been obvious to add the nut and bolt connection [of Anderson] to both of Fuchs’ rotation/fixation devices to add a more secure lid assembly that can’t be removed or lifted as quickly or without the use of hand tools to remove the nuts.” (Office Action p. 3). Applicant respectfully disagrees. *Fuchs* explicitly teaches away from the use of a first and a second hinge coupling comprising a nut and bolt connection. Rather, *Fuchs* teaches that

[c]hannel devices are also known in which hinges . . . allow the cover to be pivoted to one side. A substantial disadvantage of this known channel device is that the cover cannot be detached from the frame, and hence cannot be removed. Another disadvantage associated with the use of hinges is that hinges require a great deal of maintenance. In particular, when a channel is being used for drainage of surface water, they will inevitably become dirty and corroded to an extent that their function is impaired, and the hinge region may even become fractured.

(*Fuchs*, paragraph 7) (emphasis added). Thus, *Fuchs* explicitly teaches that multiple disadvantages result when hinges are used. Accordingly, the quoted paragraph of *Fuchs* would lead away from the proposed modification that would include the alleged nut and bolt hinge

connection of *Anderson*, and such modification cannot support an obviousness rejection. MPEP § 2141.02(VI).

For at least these reasons, Applicant respectfully contends that the combination of *Kewitz*, *Fuchs*, and *Anderson* is improper and does not disclose, teach, or suggest the combination of limitations of Claim 1, and therefore respectfully request that the rejection of Claim 1 be withdrawn.

Claims 2-12, 15-16, and 19-23 each depend, either directly or indirectly, from Claim 1 and incorporate all the limitations thereof. Therefore, Claims 2-12, 15-16, and 19-23 are each patentably distinguishable from the combination of *Kewitz*, *Fuchs*, and *Anderson* for at least reasons analogous to those discussed above with regard to Claim 1.

Claim 24 includes limitations generally directed to a shroud lid configured to cover the top region of the shroud, the shroud lid coupled to the shroud at both a first hinge coupling and a second hinge coupling, when the shroud lid is in a closed position. Accordingly, Applicant contends that Claim 24 is patentably distinguishable from the combination of *Kewitz*, *Fuchs*, and *Anderson* for at least reasons analogous to those discussed above with regard to Claim 1.

Claims 25-34 and 36 each depend, either directly or indirectly, from Claim 24 and incorporate all the limitations thereof. Therefore, Claims 25-34 and 36 are each patentably distinguishable from the combination of *Kewitz*, *Fuchs*, and *Anderson* for at least reasons analogous to those discussed above with regard to Claims 1 and 24.

The Office Action states that Claim 35 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kewitz* in view of *Fuchs* and *Anderson* as applied to claim 24 and further in view of U.S. Patent No. 6,024,243 to Palazzo (“*Palazzo*”). Applicant respectfully traverses this rejection.

Claim 35 depends from Claim 24 and incorporates all the limitations thereof. In rejecting Claim 35, the Office Action relies on the combination of *Kewitz*, *Fuchs*, and *Anderson* as disclosing each of the limitations of Claim 24. As discussed above, the combination of *Kewitz*, *Fuchs*, and *Anderson* is improper and does not disclose, teach, or suggest each of the limitations

of Claim 24, and *Palazzo* does not cure this deficiency. Therefore, Applicant submits that Claim 35 is allowable for at least reasons analogous to those discussed above with regard to Claims 1 and 24.

CONCLUSION

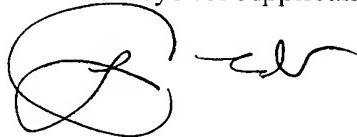
Applicant has made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicant.

Applicant believes no fee is due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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